



February 3, 2012

Municipal Permit Comments  
Washington State Department of Ecology  
Water Quality Program  
P.O. Box 47696  
Olympia, WA 98504-7696

Submitted electronically to the following address: [SWPermitComments@ecy.wa.gov](mailto:SWPermitComments@ecy.wa.gov)

Subject: Comments regarding "Draft Phase II Municipal Stormwater Permit" and "Appendix I" of the Phase I and Phase II permits

Dear Water Quality Program:

Thank you for this opportunity to comment on recent updates to the Western Washington Municipal Stormwater Permits. The Washington Public Ports Association (the "Association") is a public agency trade association representing more than 70 port districts statewide. Port properties provide vital infrastructure including marine terminals, barge facilities, industrial sites, marinas, airports and railroads. Since the Association represents port districts covered under both the Phase I and Phase II permits, the comments herein represent concerns that cross over between the two, although we used the Phase II permit for purposes of attribution.

Finally, we would like to recognize the improvements between this draft and previous drafts, especially in the sections concerning low impact development ("LID"). Specifically, we were encouraged by the inclusion of a list of conditions indicating where and when LID may not be feasible. As mentioned previously, this is a significant improvement. We still remain concerned, however, about the potential for code-related requirements that would minimize impervious surfaces in all development situations and mandate LID principles and best management practices ("BMPs") as the preferred approach to site development.

The following comments regard specific sections of the draft permit and appendices:

## Stormwater Management Program for Cities, Towns and Counties (S5)

Although the permit requirements in this section are not directly applicable to ports, many ports will be required to meet many of these requirements through their local municipalities.

## Stormwater Management Program for Secondary Permittees

- S6.D.3.f:** The proposed permit would require secondary permittees to “provide for the opportunity for training to tenants.” While ports may *voluntarily* provide tenant education opportunities regarding appropriate stormwater techniques, it is not the *responsibility* of secondary permittees to train employees from other organizations. Mandating this kind of training may infer responsibility for content as well as a responsibility to ensure that employees have a certain level of knowledge. This may be a reasonable expectation for a port tenant (the direct employer) but seems an unreasonable expectation of the port, which essentially fulfills the role of a landlord. Furthermore, in the ports environment, this expectation is complicated by the diverse employer-employee relationships which include employment of union labor and independent contractors.
- S6.D.6a:** Regarding operations and maintenance (“O&M”) plans, the permit should use the phrase “conducted by the secondary permittee,” rather than the more ambiguous phrase “under the functional control.”

## General Conditions

- G 10** The proposed permit states that solids resulting from cleaning stormwater facilities may be reused or delivered to a qualified solid waste disposal site. Yet, Appendix 6 indicates that street waste solids must be managed appropriately as a solid waste. These references appear to conflict, so clarification of the ability to reuse solids (and limitations) seems necessary.

## Appendices

- Appendix I, Section 2** Gravel roads and packed earthen materials should not be included in the list of impervious surfaces. These terms are vague and cover a wide range of materials that may actually be pervious.

The definition of impervious surface should also specifically clarify that railroad tracks designed with ballast and sub-ballast layers are not impervious or hard surfaces.

- Appendix I, Section 4** Project examples regarding residential, commercial and industrial projects are in order to illustrate the proper application of minimum requirements 5, 6, and 7. The new development and redevelopment guidance has become significantly more complex with the introduction of new LID requirements. Project examples would help project

proponents better understand and comply with these new requirements.

**Appendix I, Section 4.5** Under minimum requirement 5, LID requirements should not be required in flow control exempt areas. LID is appropriate to protect against potential downstream erosive impacts, and is potentially appropriate to protect water quality in certain instances. However, in flow control exempt areas, the Department has already determined that stormwater discharges are unlikely to cause downstream erosive impacts. Regarding treatment, LID may be one of many technologies appropriate for a particular site and a project proponent should not be required to implement LID when another technology may be as protective (or could even be more protective), at a lesser cost and with less impact to the site.

Additionally, LID seems most effective when used as one of various tools available at a specific site, rather than as a mandated technique. The liabilities associated with specific requirements could far outweigh the benefits in certain situations. Two serious liability concerns include the cost of compliance as well as potential damage to properties down gradient (such as flooding or erosion where infiltrated water resurfaces). When used appropriately, LID can provide benefits at a reasonable cost. However, this determination should be made on a site-specific basis, especially in the early stages of implementation.

**Appendix I, Section 8** Under feasibility criteria, the geotechnical opinion that bioretention and/or permeable pavements should not be used should be extended beyond the existing language which limits it to erosion, slope, failure or flooding. This would be accomplished by ending the sentence with a period (.) after the word “area.”

Also, in this section, we suggest the following:

- Under the feasibility criteria, we recommend replacing the criterion of “within 100 feet of known hazardous waste site” with “upgradient of a known or suspected contaminated site that could be hydraulically impacted by the project.”
- “High land value” should be included as a competing need making the application of LID BMPs infeasible.
- LID BMPs should not be required in flow control exempt areas.

**Appendix 6** The proposed language includes a new subsection on “street waste solids.” Yet, the text addresses “contaminated soil.” Is Ecology considering street waste solids as contaminated soil? These terms are not synonymous and the text should be revised accordingly.

Thank you again for the opportunity to comment on this recent draft of the Municipal Stormwater Permit. I will be happy to answer any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Johan Hellman', is centered on a light gray rectangular background.

Johan Hellman  
Assistant Director